

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

District Personnel Manual Issuance System

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DPM Chapter(s) 11B

DPM Instruction No. 11B-57

SUBJECT: Overtime Policy for FLSA-Exempt Positions

Date: May 28, 2008

1. Purpose

The purpose of this instruction is to reiterate the District government's policy concerning the payment of overtime to employees whose positions are designated as "*exempt*" under the Fair Labor Standards Act of 1938 (FLSA), as amended.

2. Overtime Policy

District government employees whose positions are designated as "*FLSA-exempt*" are not eligible for overtime pay and shall not be paid overtime under any circumstance.

3. Overtime Standards under the FLSA

- a. The FLSA establishes various labor standards for the private and public sectors, including minimum wage, overtime, and compensatory time in lieu of paid overtime.
- b. The provisions of the FLSA are applicable to the District government.
- c. Based on the duties of the position they occupy, the FLSA divides employees into 2 categories: "*FLSA-non exempt*" and "*FLSA-exempt*." An employee's FLSA category (or status) will determine whether he or she is eligible for FLSA overtime compensation for authorized (approved) overtime work performed:
 - (1) ***FLSA nonexempt*** employees are eligible for FLSA overtime compensation for authorized overtime work performed.
 - (2) ***FLSA exempt*** employees are not eligible for FLSA overtime compensation for overtime work performed.
- d. Under the FLSA, compensatory time may be approved "*in lieu of*" (instead of) paid overtime compensation for *FLSA-non exempt* overtime work performed.

Note: DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employees under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart 1, § 1.3]

Inquiries: Compensation and Classification Administration, DCHR (202) 442-9700

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e. The FLSA criteria for exemption are:

- (1) **Administrative Exemption** – The employee's primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers. Employees in this job category exercise discretion and independent judgment with respect to matters of significance. Employees in this job category evaluate and compare possible courses of action and then make a decision or recommendation after considering the various possibilities.
- (2) **Executive Exemption** – The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise. The employee customarily directs the work of two (2) or more other employees or their equivalent. The employee in this job category has the authority to hire or fire, and his or her recommendations carry significant weight in, or is, the final decision.
- (3) **Professional Exemption (Learned Professional)** – The employee's primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character and which includes work requiring the consistent exercise of discretion and judgment. Employees in this job category typically have/require advanced knowledge obtained by completing an academic course of study resulting in a four-year (4-year) college degree or leading to certification.
- (4) **Professional Exemption (Creative Professional)** – The employee's primary duty must be the performance of work requiring knowledge of an advanced type in a field of science or prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. The employee in this job category's primary duty is to perform work requiring invention, originality, or talent in a recognized field of artistic endeavor such as music, writing, acting, and the graphic arts.
- (5) **Computer Employee Exemption** – The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer field, performing the duties such as:
(a) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; (b) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or (d) A combination of the aforementioned duties, the performance of which requires the same level of skills.
- (6) **Highly Compensated Employee Exemption** – Highly compensated employees performing office or non-manual work, and paid total annual compensation of


\$100,000 or more are exempt from the FLSA if they customarily and regularly perform at least one (1) of the duties of an exempt executive, administrative, or professional employee identified in the standard tests for exemption.

[Additional information regarding the FLSA may be obtained by visiting the *U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division's* Website at www.wagehour.dol.gov]

- f. Based on the duties of the position, and utilizing the exemption definitions above, the following District government positions would typically not be eligible for overtime:
- (1) Management Supervisory Service positions – all grade levels;
 - (2) Excepted Service positions at pay levels ES-06 and above that meet the FLSA exemption criteria above;
 - (3) Executive Service positions – all pay levels;
 - (4) Legal Service Senior Executive Attorney Service (SEAS) positions – all grade levels; and
 - (5) Non-union Career Service positions at grade levels 12 and above (or equivalent) that meet the FLSA exemption criteria above.

4. Agencies' Compliance with Overtime Policy

- a. Strict compliance with this policy and the overtime regulations is required from all agencies.
- b. Any previous non-compliance with the overtime policy herein does not and shall not establish a waiver of compliance with the official overtime regulations and this policy.


Brender L. Gregory
Director